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Minn. Stat. § 480A.08, subd. 3 (2012).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A13-0847**

State of Minnesota,
Respondent,

vs.

Marvin Lee Bobo,
Appellant.

**Filed February 10, 2014
Affirmed
Schellhas, Judge**

Goodhue County District Court
File No. 25-CR-12-2563

Lori Swanson, Attorney General, St. Paul, Minnesota; and

Stephen N. Betcher, Goodhue County Attorney, Christopher J. Schrader, Assistant
County Attorney, Red Wing, Minnesota (for respondent)

Cathryn Middlebrook, Chief Appellate Public Defender, Susan Andrews, Assistant
Public Defender, St. Paul, Minnesota (for appellant)

Considered and decided by Bjorkman, Presiding Judge; Schellhas, Judge; and
Stauber, Judge.

UNPUBLISHED OPINION

SCHELLHAS, Judge

Appellant argues that his conviction of being a felon in possession of a firearm is
not supported by sufficient evidence. We affirm.

FACTS

On October 23, 2012, respondent State of Minnesota charged appellant Marvin Bobo with felonious firearm possession under Minn. Stat. § 624.713, subd. 1(2) (2012). Bobo demanded a speedy trial. The state noticed its possession of Bobo's confessions. Bobo waived his right to a jury trial and stipulated that he had been convicted of aggravated robbery, a felony. At a court trial, the state offered testimony from J.I., J.I.'s wife, Red Wing Police Officer Jeffrey Mund, and Red Wing Police Detective Anthony Grosso. Bobo testified on his own behalf.

The trial testimony revealed that J.I.'s real property consisted of three contiguous lots in the City of Red Wing. J.I.'s home was on one lot; his double garage was on an east, adjacent lot; and a mostly vacant lot was located north of the garage lot. On the morning of October 14, 2012, a neighbor informed J.I. that "someone was up" behind J.I.'s garage. Upon investigating, J.I. first found some trash near his garage that consisted of snack wrappers and a bag of clothes and papers. Behind the garage, J.I. discovered an area of matted weeds and brush where someone apparently had been lying. And, about six feet from that spot, J.I. found an old bed sheet wrapped around what felt like "the stock of a gun." About six feet from the sheet, J.I. found a box of shotgun shells that was missing two shells. He called police and locked the sheet with its contents and the box of shells in his garage.

Officer Mund later unwrapped the sheet and found the shotgun with two live shells in it, which Officer Mund returned to the box of shells. The gun was a Winchester Model 1500 shotgun, and J.I. had never before seen it. Officer Mund also found the bag,

searched it, and found paperwork in it regarding Bobo's application for disability benefits. The paperwork included a letter addressed to Bobo that notified him of a hearing on December 11, 2012.

J.I. informed a neighbor about the shotgun, and J.I., his wife, and the neighbor confronted Bobo when they saw him walking toward the area where J.I. found the shotgun. J.I.'s wife told Bobo that "the gun was turned over to the police," and Bobo said nothing, turned, and walked away. Approximately two weeks later, Detective Grosso conducted a taped custodial interrogation of Bobo, who made the following statements about the gun:

BOBO: I might have moved [the gun] . . . somewhere away from my stuff 'cuz I didn't know that it was by my stuff so I might have moved it. You know, I . . . locate[d] a sheet and I opened it but I . . . didn't know what it was so . . .

DETECTIVE GROSSO: You opened the sheet and you had to have seen the gun, [Bobo], because . . .

BOBO: Right.

DETECTIVE GROSSO: . . . it was right in the sheet.

BOBO: Yeah.

DETECTIVE GROSSO: It isn't, oh you saw the sheet by yourself and you didn't know what it was.

BOBO: Was, yeah.

DETECTIVE GROSSO: So you opened the sheet.

BOBO: Yeah.

DETECTIVE GROSSO: So that's why your fingerprints are going to be on the gun?

BOBO: Yeah. I think that's perhaps why it should be on there.

DETECTIVE GROSSO: Okay. And then you, and then you moved it.

BOBO: Yeah.

. . . .

DETECTIVE GROSSO: You just picked it up and moved it.

BOBO: That was it.

DETECTIVE GROSSO: It was only in your possession from the time that you picked it up from your stuff and put it on the other side of the yard.

BOBO: Yes, sir.

The district court heard the above portions of the taped interrogation. And J.I. and his wife identified Bobo as the man that they confronted near their garage. But no witness claimed to have seen the shotgun on Bobo's person.

At the close of the state's case, Bobo moved for judgment of acquittal, arguing that his confession was not sufficiently corroborated so as to satisfy Minn. Stat. § 634.03 (2012). The district court denied the motion, and Bobo testified, denying that he encountered J.I., his wife, or their neighbor. He also denied placing the food wrappers or bag on J.I.'s property, stating that the items in the bag "might have been" stolen from him. He denied knowing about the shotgun, placing it on J.I.'s property, moving it, or putting the shotgun shells on J.I.'s property. Regarding his statements made to Detective Grosso, Bobo said that he did not mean to say that he moved the gun, testifying as

follows: “I was actually confused by the question. I was misunderstood and confused. I didn’t recognize what he was talking about. . . . Like just the way he came about the DNA and all that. I didn’t understand what he meant.”

The district court found that Bobo’s confession was sufficiently corroborated and found him guilty of violating Minn. Stat. § 624.713, subd. 1(2), which provides that “a person who has been convicted of . . . a crime of violence” “shall not be entitled to possess a . . . firearm.”

This appeal follows.

DECISION

Bobo argues that the evidence was insufficient to prove that he knowingly possessed a firearm.¹ The district court concluded that the state met its burden of proving that Bobo illegally possessed a firearm because he admitted “to physically handling the shotgun, [and] although very fleeting by his version of events, [that] is sufficient to constitute possession under the statute.” We agree.

To satisfy its burden of proof, the state had to prove that Bobo consciously exercised dominion and control over the shotgun. *See State v. Porter*, 674 N.W.2d 424, 427 (Minn. App. 2004) (citing *State v. Florine*, 303 Minn. 103, 105, 226 N.W.2d 609, 611 (1975)); *see also State v. Loyd*, 321 N.W.2d 901, 902 (Minn. 1982) (“[T]he state only had to prove either actual or constructive possession of the gun by defendant.”); *In re Welfare of S.J.J.*, 755 N.W.2d 316, 318 (Minn. App. 2008) (“[B]ecause appellant stipulated that he was ineligible to possess a firearm, the only issue at trial was whether

¹ In his supplemental pro se brief, Bobo argues merely that he did not possess the gun.

appellant knowingly possessed or consciously exercised dominion and control over the handgun.”); *State v. Jackson*, 655 N.W.2d 828, 830 (Minn. App. 2003) (“Appellant . . . was ineligible to *knowingly* possess, transport, or receive a firearm because of a prior felony conviction of terroristic threats.” (emphasis added)), *review denied* (Minn. Apr. 15, 2003).

During his interrogation by Detective Grosso, Bobo confessed that he saw the shotgun when he unwrapped it, “picked it up and moved it,” and had the gun “in [his] possession from the time that [he] picked it up from [his] stuff and put it on the other side of the yard.” *See State v. Heiges*, 806 N.W.2d 1, 12 (Minn. 2011) (“[T]he term ‘confession’ encompasses all statements made after the commission of the charged offense in which the defendant acknowledges guilt of the crime either implicitly or explicitly.”). However fleeting Bobo’s dominion and control of the shotgun may have been, based on Bobo’s statements to Detective Grosso, he admitted that he knowingly picked up the shotgun and moved it to the other side of the yard. Minnesota does not recognize a fleeting-control exception to the crime of illegal possession of a firearm. *S.J.J.*, 755 N.W.2d at 318–19.

We acknowledge that Bobo’s confession was the only direct evidence of his firearm possession. *See State v. McClain*, 208 Minn. 91, 95–96, 292 N.W. 753, 755 (1940) (“Confessions are held to be direct, rather than circumstantial, evidence of guilt.”). Minnesota Statutes section 634.03 provides that “[a] confession of the defendant shall not be sufficient to warrant conviction without evidence that the offense charged has been committed.” But the independent corroboration that section 634.03 requires is not

“independent corroboration of *[the] confession*,” *In re C.M.A.*, 671 N.W.2d 597, 602 (Minn. App. 2003) (emphasis added); section 634.03 requires “independent evidence of *attending facts or circumstances* from which the jury may infer the trustworthiness of the confession,” *Heiges*, 806 N.W.2d at 13 (emphasis added) (quotations omitted). And the district court, as the fact-finder, could infer the trustworthiness of Bobo’s confession based on the attending facts and circumstances. Indeed, although the court noted that the evidence “skirt[ed] the edge of the corroboration requirement,” it concluded that the sufficient corroboration existed in the form of, among other things, the proximity of the shotgun to the bag of clothes and documents bearing Bobo’s name and the in-court identification of him.

We conclude that the evidence was sufficient to prove that Bobo knowingly possessed the shotgun, and we therefore affirm the conviction.

Affirmed.